UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LONDON-SIRE RECORDS, INC., et al.,           )     No. **1:04cv12434-NG**
                                             )          LEAD DOCKET NO.
            Plaintiffs,                       )
                                             )
                                             )
            -v.-                              )
                                             )
DOE 1 et al.,                                 )
                                             )
            Defendants.                       )
_____)

**REPLY TO OPPOSITION TO MOTIONS TO (A) STRIKE DECLARATIONS OF
CARLOS LINARES IN SUPPORT OF *EX PARTE* APPLICATIONS FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY; AND (B) VACATE ALL ORDERS GRANTING
SAID APPLICATIONS**

**PRELIMINARY STATEMENT**

Doe replies to Plaintiffs' arguments I through VI as follows:

**I.        Defense Counsel Does Not Have Standing**

Although the motions were filed by counsel for one of the Does, all of the Linares

declarations are defective for the same reasons so the Court may decide to strike all at the same

time and vacate all of the expedited discovery orders for judicial efficiency.  The cases were

consolidated because there were common issues which apply to all of them.  The reliability of

the Linares declarations is one of those common issues.  Further, the Court may order refund of

all settlement payments received due to the false declarations and false pretenses under which

other Does settled, thereby benefiting all Does in cases consolidated under this caption.

**II.       Defendant's Claims are Moot**

As to Does who have settled, the motions are not moot if the Court considers ordering

refund of settlement payments due to the false declarations.

**III.**    **Linares's Declarations are Factually Correct and Based on Personal Knowledge**

Neither Linares nor the RIAA can claim first hand knowledge of the investigations or the

results since the investigations were conducted by an independent party which holds itself out to

the public as an investigator of copyright infringements.  The RIAA is not its only client. RIAA

can only say that they received reports from MediaSentry.  No declaration under penalty of

perjury by MediaSentry itself is before the Court and therefore the Court should not rely on a

second hand report by Linares as to what MediaSentry reported to its client, the RIAA. Under the

Federal Rules of Evidence, of course, hearsay is "a statement, other than one made by the

declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the

matter asserted."  FRE 801(c).  Declarant Linares's quoting of MediaSentry's reports is hearsay

and, since plaintiffs have not claimed any FRE 803 exceptions, his declarations are inadmissable

under FRE 802.

**IV.**    **Plaintiffs Conducted a Proper Investigation of Defendants' Infringement**

The trustworthiness of the MediaSentry investigations is a crucial issue.  The

Commonwealth regulates investigators to assure ethical standards and competency standards are

met; and can revoke an investigator's license if a valid complaint by a member of the public is

received.  In view of MediaSentry's violating the licensing law, the trustworthiness of what

Linares claims they reported to him should be in doubt.  Furthermore, in spite of an outstanding

official Cease and Desist order from the Commonwealth, MediaSentry has continued to

investigate in the Commonwealth and plaintiffs have even submitted results of such post-cease

and desist order investigations in a recent suit consolidated under the above caption.  See

EXHIBIT A DOE LIST filed with Complaint of March 26, 2008 captioned *Laface v. Does 1-17*,

1:08-cv-10492-NG, listing I. P. addresses for Does 15-17 on Jan. 22, Jan. 31, and Feb. 4, 2008,

respectively, all subsequent to the official Cease and Desist letter of Jan. 2, 2008. Plaintiffs

allege MediaSentry responded to the Cease and Desist order but did not file a copy of such

response, nor did they allege the Cease and Desist order has been rescinded. Doe suggests that

information received from this scofflaw private investigator, through an intermediary's

declaration and not through the private investigator's declaration, is not trustworthy enough to

establish a *prima facie* case of copyright infringement sufficient to justify expedited discovery

(discovery being used for purposes of extortion of settlements rather than for uncovering facts

leading to evidence to be used at a trial).

Plaintiffs again advance two previously briefed arguments that MediaSentry was

excepted from the licensing law. First, plaintiffs cite the MGL exception for an attorney at law

in the practice of his profession. MediaSentry was not an attorney at law in the practice of his

profession, nor a full time employee of an attorney. See detailed analysis in section D.1 of *Reply*

*to Plaintiffs' Opposition to Doe's Supplemental Memorandum of Law* on Feb. 26, 2008,

Second, plaintiffs claim MediaSentry only gathered public information. This is not an exception

and is also untrue. See section D.2 of *Reply to Plaintiffs' Opposition to Doe's Supplemental*

*Memorandum of Law* where Doe previously rebutted plaintiffs' frivolous "public information"

argument.

Plaintiffs claim that they were unaware of the Jan. 2, 2008, cease and desist letter when

counsel appeared at the Jan. 28, 2008 hearing and that is why they would not admit to it when

the undersigned called it to the Court's attention. In sharp contrast, plaintiffs claim that Linares

closely supervised MediaSentry and they were equivalent to being an employee of Linares who

was an attorney employed by RIAA. Either plaintiffs' counsel has an unusual view of their duty

of candor to the Court or MediaSentry did not report the cease and desist letter to its supervisor,

Linares, or attorney Linares did not report the letter to counsel appearing at the Jan. 28 hearing.

### V.        The Court Properly Determined that there was a Statistically Reasonable Inference of Distribution

Again, only 10 files were identified as recordings of plaintiffs' copyrighted works, not

700, and there was no evidence that any were unlicensed, contrary to Linares's false declarations

that they were infringements.

### VI.       Intent is not Required for Copyright Infringement

Intent is an element of  "offering to distribute" or "making available."  The Court

recognized this obvious principle and implied intent due to a misapprehension as to the number

of files each Doe was allegedly "sharing," i.e., up to 700 loosely alleged by plaintiffs vs. 10 or

less actually listed by MediaSentry.

#### CONCLUSION

The false and misleading Linares declarations should be stricken and all order based on

them should be vacated.

Linares falsely declared under penalty of perjury that MediaSentry was able to detect

infringement because the P2P software being used by targeted individuals has file sharing

features enabled, but no infringement can occur until a file is copied from the targeted

individuals, and MediaSentry is unable to detect any such copying except for its own, authorized

and therefore non-infringing copying.

Linares also falsely declared that MediaSentry gathers metadata that demonstrates that

the targeted individual was engaged in copyright infringement, i.e., that MediaSentry is able to

determine from metadata that the individual has made a reproduction, which is not technically

possible since, as eminent computer scientist Dr. Azer Bestevos, stated in his uncontroverted declaration filed in this action, it is impossible to determine if a file is a licensed file or an unlicensed copy since they are identical.

Linares also implied that RIAA can determine whether a file is an illegal copy by listening to it but the uncontroverted Dr. Azer Bestavos declaration explains why the Linares statement is impossible.

Now plaintiffs assert that Linares as an attorney employed MediaSentry, contrary to his declaration that RIAA employed MediaSentry. Linares is not a Massachusetts attorney and RIAA was not "employed" by him in the sense of a full time employee; MediaSentry performs investigations for hire for others as well, not exclusively for RIAA or exclusively for "attorney" Linares.

Respectfully submitted,

/s/ Raymond Sayeg

Attorney for Doe

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